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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/724,956	11/28/2000	Malcolm Slaney	IR-028	7798
21912	7590	10/19/2006	EXAMINER	
VAN PELT, YI & JAMES LLP 10050 N. FOOTHILL BLVD #200 CUPERTINO, CA 95014			SALTARELLI, DOMINIC D	
			ART UNIT	PAPER NUMBER
			2623	

DATE MAILED: 10/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/724,956

Applicant(s)

SLANEY ET AL.

Examiner

Dominic D. Saltarelli

Art Unit

2623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 September 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 5, 2006 has been entered.

### ***Response to Arguments***

2. Applicant's arguments filed September 5, 2006 have been fully considered but they are not persuasive.

Applicant argues that Zigmond, Eldering, and Tetsumura do not teach obtaining an ascertained physical characteristic based on data that is passively sensed without requiring interaction by a viewer (applicant's remarks, page 8).

In response, as shown below, Tetsumura teaches obtaining an ascertained physical characteristic based on data that is passively sensed without requiring interaction by a viewer using a combination of an ultrasonic sensor (7) and heat sensors (8) to passively monitor a room to ascertain physical characteristics of viewers in said room (see Tetsumura, col. 3 line 37 – col. 4 line 12).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-11, 13-27, and 29-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zigmond et al. (6,698,020, of record) [Zigmond] in view of Eldering (6,324,519, of record) and Tetsumura (5,793,409, of record).

Regarding claims 1, 11, and 44, Zigmond discloses a system and method for selectively displaying content on a content display device at a content display site (fig. 3), comprising:

Means (fig. 5, ad selection criteria 83) for ascertaining instructions and data (ad selection rules) regarding the value to a content provider and the value to a content observer at the content display site of displaying each of a plurality of sets of content to the content observer (correlations between viewer and system information with advertisement parameters determine the value, col. 11, lines 31-49); and

Means (fig. 5, ad selection criteria 83) for processing instructions and data for selecting one of the plurality of sets of content for display by the content display device in accordance with a criterion based on the values associated with the plurality of sets of content (highest correlation, and therefore, highest value, ads are selected for display, col. 11, lines 31-49).

Zigmond fails to disclose (1) the values associated with the plurality of sets of content are bid values that can vary for the same set of content based on a characteristic associated with the content observer at content display site (2) an ascertained physical characteristic regarding the content observer at the content display site is obtained based at least in part on data that is passively sensed without requiring interaction by the content observer at the content display site, and (3) the bid values and the ascertained characteristic are used in selecting one of the plurality of sets of content for display.

In an analogous art, Tetsumura teaches ascertaining physical characteristic data regarding content observers at a content display site based in part on data that is passively sensed without requiring interaction by the content observer at the content display site (col. 2, lines 25-39 and col. 3 line 37 – col. 4 line 12), for the benefit of accurately determining the audience of a displayed program (col. 7, lines 1-16).

It would have been obvious at the time to a person of ordinary skill in the art to modify the system and method disclosed by Zigmond to include ascertaining physical characteristic data regarding content observers at a content display site based in part on data that is passively sensed without requiring interaction by the content observer at the content display site, as taught by Tetsumura, for the benefit of the benefit of accurately determining the audience of a displayed program, reporting both whom is watching and how many different people are watching.

Zigmond and Tetsumura fail to disclose the values associated with the plurality of sets of content are bid values that can vary for the same set of content based on a characteristic associated with the content observer at content display site and the bid values and the ascertained characteristic are used in selecting one of the plurality of sets of content for display.

In an analogous art, Eldering teaches providing advertisers with the opportunity to bid on the attention of home users, wherein the bid value vary based on the relevance of the advertisement to the particular user (fig. 7 and col. 3, lines 56-64 and col. 10, lines 29-41), as bid values are established based in part on ascertained characteristics of viewers (col. 10, lines 29-41), for the benefit of maximizing the revenues gained from the sale of advertising space while allowing advertisers to control the dissemination of their advertisements.

It would have been obvious at the time to a person of ordinary skill in the art to modify the system and method disclosed by Zigmond and Tetsumura to include the values associated with the plurality of sets of content are bid values that can vary for the same set of content based on a characteristic associated with the content observer at the content display site, wherein the bid values and the ascertained characteristic are used in selecting one of the plurality of sets of content for display because the ascertained characteristic is used in establishing the bid values, as taught by Eldering, for the benefit of maximizing the revenues gained from the sale of advertising space while allowing advertisers to control the dissemination of their advertisements.

Regarding claim 2, Zigmond, Tetsumura, and Eldering disclose the system of claim 1, and further disclose the instructions and data regarding the value of displaying each of the plurality of sets of content further comprises instruction and data regarding the value of displaying a set of content to a content observer at the content display site have a specified identity or characteristic (Zigmond, col. 11, lines 50-65).

Regarding claim 3, Zigmond, Tetsumura, and Eldering disclose the system of claim 2, and further disclose means of ascertaining the identity of a content observer at the content display site (Zigmond, col. 9 line 56 – col. 10 line 3).

Regarding claim 4, Zigmond, Tetsumura, and Eldering disclose the system of claim 2, and Zigmond further discloses means for ascertaining the identity of a content observer (col. 9 line 56 – col. 10 line 3) prior to the time of a content display opportunity (col. 8, lines 39-54), and wherein the value of displaying a set of content during the content display opportunity depends on the identity or the characteristic of the content observer observing the content display device at the time of a content display opportunity (col. 11, lines 31-49 and col. 12, lines 33-43).

Regarding claim 5, Zigmond, Tetsumura, and Eldering disclose the system of claim 2, and further disclose the instruction and data regarding the value of displaying each of the plurality of sets of content further comprise instructions and data regarding the value of displaying a set of content to a plurality of content observers at the content display site have one or more specified characteristics (Zigmond, col. 11, lines 50-65).

Regarding claim 6, Zigmond, Tetsumura, and Eldering disclose the system of claim 1, and further disclose the instructions and data regarding the value of displaying each of the plurality of sets of content further comprise instructions and data regarding the value of displaying a set of content at a content display site have a specified characteristic (Zigmond, col. 14, lines 49-58).

Regarding claim 7, Zigmond, Tetsumura, and Eldering disclose the system of claim 6, and further disclose means for ascertaining a characteristic of the content display site (Zigmond, col. 10, lines 48-63).

Regarding claim 8, Zigmond, Tetsumura, and Eldering disclose the system of claim 1, and further disclose the instructions and data regarding the value of displaying each of the plurality of sets of content consist of instructions



and data regarding the value to a content provider of displaying a set of content (Zigmond, col. 11, lines 62-65).

Regarding claim 9, Zigmond, Tetsumura, and Eldering disclose the system of claim 1, and further disclose the instructions and data regarding the value of displaying each of the plurality of sets of content consist of instructions and data regarding the value to a content provider and to a content observer of displaying a set of content (Zigmond, col. 11, lines 31-49).

Regarding claim 10, Zigmond, Tetsumura, and Eldering disclose the system of claim 1, wherein the value of displaying a set of content is ascertained and the selection of one of a plurality of sets of content for display occurs immediately prior to the time at which the selected set of content is to be displayed (Zigmond, col. 15 line 66 – col. 16 line 19).

Regarding claims 13 and 23, Zigmond, Tetsumura, and Eldering disclose the system of claim 1, and further disclose the instructions and data regarding the value of displaying each of the plurality of sets of content further comprises instructions and data regarding the value of displaying a set of content based on when the set of content is to be displayed (Zigmond, col. 13, lines 59-67).

Regarding claim 14, Zigmond, Tetsumura, and Eldering disclose the system of claim 13, and further disclose the instructions and data regarding the value of displaying a set of content based on when the set of content is to be displayed further comprise instructions and data regarding the value of displaying a set of content based on the number of time that the set of content has previously been displayed to a particular content observer (Zigmond, col. 13, lines 40-47).

Regarding claim 15, Zigmond, Tetsumura, and Eldering disclose the system of claim 13, and further disclose the instructions and data regarding the value of displaying a set of content based on when the set of content is to be displayed further comprise instructions and data regarding the value of displaying a set of content based on the frequency with which a set of content has been displayed to a particular content observer (Zigmond, col. 13, lines 40-47).

Regarding claim 16, Zigmond, Tetsumura, and Eldering disclose the system of claim 13, and further disclose the instructions and data regarding the value of displaying a set of content based on when the set of content is to be displayed further comprise instruction and data regarding the value of displaying a set of content based on absolute times at which the set of content is to be displayed (content providers specify time of day, Zigmond, col. 13, lines 59-67).

Regarding claim 17, Zigmond, Tetsumura, and Eldering disclose the system of claim 13, and further disclose the instructions and data regarding the value of displaying a set of content based on when the set of content is to be displayed further comprise instructions and data regarding the value of displaying a set of content based on a range of time during which the set of content is to be displayed (content providers specify time ranges, such as "late night" or "primetime", Zigmond, col. 13, lines 59-67).

Regarding claim 18, Zigmond, Tetsumura, and Eldering disclose the system of claim 13, and further disclose the instructions and data regarding the value of displaying a set of content based on when the set of content is to be displayed further comprise instructions and data regarding the value of displaying a set of content based on the temporal proximity of the prospective display of the set of content to the display of other content (Zigmond, col. 14, lines 13-24).

Regarding claim 19, Zigmond, Tetsumura, and Eldering disclose the system of claim 13, and further disclose the instructions and data regarding the value of displaying a set of content based on the temporal proximity of the prospective display of the set of content to the display of other content further comprise instructions and data regarding the value of displaying a set of content based on the temporal proximity of the prospective display of the set of content to another display of the same set of content (Zigmond, col. 13, lines 40-47).

Regarding claim 20, Zigmond, Tetsumura, and Eldering disclose the system of claim 18, and further disclose the instructions and data regarding the value of displaying a set of content based on the temporal proximity of the prospective display of the set of content to the display of other content further comprise instructions and data regarding the value of displaying a set of content based on the temporal proximity of the prospective display of the set content to the display of content of a particular type (car manufacturer ad, Zigmond, col. 14, lines 13-24).

Regarding claim 21, Zigmond, Tetsumura, and Eldering disclose the system of claim 18, and further disclose the instructions and data regarding the value of displaying a set of content based on the temporal proximity of the prospective display of the set of content to the display of other content further comprise instructions and data regarding the value of displaying a set of content based on the temporal proximity of the prospective display of the set content to the display of another particular set of content (advertisement shown after competitor, Zigmond, col. 14, lines 13-24).

Regarding claim 22, Zigmond, Tetsumura, and Eldering disclose the system of claim 13, and Zigmond further discloses content can be displayed simultaneously on a plurality of channels that can be selected by a content

observer for display of content by the content display device (col. 13, lines 20-39), and the instructions and data regarding the value of displaying a set of content based on when the set of content is to be displayed further comprise instructions and data regarding the value of displaying a set of content based on how many of the plurality of channels with display the content at the same time (ad selection criteria includes accounting for "channel surfers", col. 13, lines 6-39).

Regarding claims 24 and 25, Zigmond, Tetsumura, and Eldering disclose the system of claim 1, and further disclose the plurality of sets of content comprise sets of secondary content that are displayed during a break within in the display of a set of primary content (secondary content is conventional television advertising, Zigmond, col. 7, lines 13-35).

Regarding claims 26 and 27, Zigmond, Tetsumura, and Eldering disclose the system of claim 1, and further disclose the content display device comprises a television or a computer display system (Zigmond, col. 6, lines 40-47).

Regarding claim 29, Zigmond, Tetsumura, and Eldering disclose the system of claim 1, and Zigmond further discloses means (fig. 5, ad insertion device 80) for receiving the plurality of sets of content at the content display site

via a network (col. 7, lines 13-25, col. 8, lines 1-37, and col. 8 line 65 – col. 9 line 20).

Regarding claims 30 and 34, Zigmond, Tetsumura, and Eldering disclose the system of claims 1 and 29, and Zigmond further discloses a data storage device (fig. 5, ad repository 86) for storing the plurality of sets of content at the content display site (col. 15, lines 17-34).

Regarding claims 31, 33, and 35, Zigmond, Tetsumura, and Eldering disclose the system of claims 1, 29, and 30, and Zigmond further discloses the means for processing (83) is located at the content display site (col. 7 lines 37-49).

Regarding claim 32, Zigmond, Tetsumura, and Eldering disclose the system of claim 31, and Zigmond further discloses means (fig. 5, statistics collection 61) for monitoring the display of sets of content by the content display device (col. 9, lines 21-55), wherein the means for monitoring is located at the content display site (col. 9, lines 42-45).

Regarding claim 36, Zigmond, Tetsumura, and Eldering disclose the system of claim 35, and Zigmond further discloses means (fig. 5, ad insertion

device 80) for receiving via a network at the content display site data for selecting on of a plurality of sets of content for display (col. 12, lines 15-32).

Regarding claim 37, Zigmond, Tetsumura, and Eldering disclose the system of claim 1, and further disclose the means for processing is located at a location remote from the content display site, and system further comprising means for transmitting the selected set of content to the means for receiving content via a network (Zigmond, col. 7, lines 55-67).

Regarding claim 38, Zigmond, Tetsumura, and Eldering disclose the system of claim 37, and Zigmond further discloses means (fig. 5, statistics collection 61) for monitoring the display of sets of content by the content display device (col. 9, lines 21-55), wherein the means for monitoring is located at the content display site (col. 9, lines 42-45).

Regarding claim 39, Zigmond, Tetsumura, and Eldering disclose the system of claim 1, and Zigmond further discloses means (fig. 5, statistics collection 61) for monitoring the display of sets of content by the content display device (col. 9, lines 21-55).

Regarding claim 40, Zigmond, Tetsumura, and Eldering disclose the system of claim 39, and Zigmond further discloses the means (fig. 5, statistics

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collection 61) for monitoring the display of sets of content by the content display device (col. 9, lines 21-55) is located at the content display site (col. 9, lines 42-45).

Regarding claim 41, Zigmond, Tetsumura, and Eldering disclose the system of claim 39, and Zigmond further discloses means (fig. 5, statistics collection 61) for monitoring the display of content by the content display device (col. 9, lines 21-55), and wherein the instructions and data regarding the value of displaying each of the plurality of sets of content further comprise instructions and data regarding the dependence of the value on previous content displayed by the content display device (value of a new ad to display are dependent upon both the previous display of the same ad, col. 13, lines 40-47 and other ads, col. 14, lines 13-24).

Regarding claim 42, Zigmond, Tetsumura, and Eldering disclose the system of claim 1, and further disclose means for discerning a content observer's response to display of a particular set of content (Zigmond, col. 9, lines 21-55).

Regarding claim 43, Zigmond, Tetsumura, and Eldering disclose the system of claim 42, and Zigmond further discloses the compensation from a content provider for display of a particular set of content provided by the content provider is dependent on the discerned viewer response to display of a particular



set of content (viewer's are given the option to actively request or block types of ads, col. 14, lines 25-35, and compensation from a content provider is directly dependent upon the display of supplied advertisements, col. 8, lines 24-29, thus a viewer requesting more of a displayed ad results in higher compensation, and a viewer subsequently blocking a displayed ad results in lower compensation).

5. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zigmond, Tetsumura, and Eldering as applied to claim 1 above, and further in view of Doherty (US 2003/0200128 A1, of record).

Regarding claim 12, Zigmond, Tetsumura, and Eldering disclose the system of claim 1, wherein Zigmond discloses a set of content must be selected for display at the content display site for each of a plurality of content display opportunities (col. 17, lines 21-32), but fail to disclose the instructions and data for selecting one of a plurality of sets of content for display further comprise instructions and data for progressively scheduling for display sets of content in decreasing order of the value associated with display of the set of content.

In an analogous art, Doherty teaches a targeted advertising method wherein advertisements displayed in a descending priority, for the benefit of maximizing the effect of advertisements upon display (paragraph 25).

It would have been obvious at the time to a person of ordinary skill in the art to modify the system disclosed by Zigmond, Tetsumura, and Eldering to include instructions and data for progressively scheduling for display sets of

content in decreasing order of the value associated with display of the set of content, as taught by Doherty, for the benefit of maximizing the effectiveness of a displayed set of content.

6. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zigmond, Tetsumura, and Eldering as applied to claim 1 above, and further in view of Steele et al. (US 2002/0046084 A1, of record) [Steele].

Regarding claim 28, Zigmond, Tetsumura, and Eldering disclose the system of claim 1, but fails to disclose the content display device comprises a radio.

In an analogous art, Steele teaches inserting targeted advertisements into radio broadcasts (paragraph 63, and paragraphs 108-111), wherein the end user receives the targeted advertisements through a radio (multimedia device 20 in fig. 1, paragraph 18), for the benefit of receiving targeted advertisements while driving.

It would have been obvious at the time to a person of ordinary skill in the art to modify the system disclosed by Zigmond, Tetsumura, and Eldering to include the content display device to be a radio, as taught by Steele, for the benefit of receiving targeted advertisements while driving or otherwise listening to radio broadcasts.

### ***Conclusion***

The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

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Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dominic D. Saltarelli whose telephone number is (571) 272-7302. The examiner can normally be reached on Monday - Friday 7:00am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller can be reached on (571) 272-7353. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Dominic Saltarelli  
Patent Examiner  
Art Unit 2611

DS



**JOHN MILLER**  
**SUPERVISORY PATENT EXAMINER**  
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